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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/614,631	07/12/2000	John Dennis Hilgren	163.1382US01	2124

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EXAMINER

PAK, JOHN D

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 06/05/2002

11

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/614631

Applicant(s)

HILGREN et al.

Examiner

PAK, J.

Group Art Unit

1666

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 2/20/02
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-30 is/are pending in the application.
- Of the above claim(s) 10-30 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1-9 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 5, 10
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

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Claims 1-30 are pending in this application.

Applicant's election of Group I, claims 1-9 in Paper No. 8 (2/2/2002) is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Accordingly, claims 10-30 are withdrawn from further consideration as being directed to non-elected subject matter. Claims 1-9 will presently be examined.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of WO 9301716 and EP 985349.

WO 93/01716 teaches an antimicrobial concentrate comprising 0.01-10 wt% C<sub>6-18</sub> peroxyfatty acid, 0.1-25 wt% C<sub>1-4</sub> peroxydicarboxylic acid, 0.1-30 wt% hydrotrope, and 1-50 wt% H<sub>2</sub>O<sub>2</sub>. See page 11, lines 18-25. Various dilution factors are disclosed (p.11, line 26 to p. 12, line 31). Uses in food facilities, food processy and disinfection of myriad surfaces are disclosed (p. 12, line 33 to p. 15, line 11).

EP 985349 discloses sanitizing meat products using aqueous streams having an antimicrobial composition added to the stream (p. 3, paragraph 12). 0.5-60 wt% carboxylic acid, 0.5-20 wt% chelating agents are in the antimicrobial composition,

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wherein the carboxylic acids and peroxydicarboxylic acids are such that mixtures of C<sub>2</sub>-C<sub>4</sub> and C<sub>8-12</sub> peroxydicarboxylic acids are present (see from paragraph 14 to paragraph 61).

While the specific percentages and activity against the specific microorganisms of the instant claims are not explicitly disclosed, the prior art none the less encompass such percentages and activity from the broad ranges taught and the known potency of mixed peroxyacids.

Therefore, the claimed invention, as a whole, would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, because every element of the invention has been fairly suggested by the teachings of the cited references.

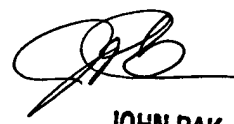
Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Pak whose telephone number is (703) 308-4538. The examiner can normally be reached on Monday to Thursday from 8 AM to 5:30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Pak/LR

May 21, 2002

  
JOHN PAK  
PRIMARY EXAMINER  
GROUP 1600